October 4, 2007

Mr. Paul Clark, President
New Castle County Council
City/County Bldg.
800 North French Street – 8th Floor
Wilmington, DE 19801

RE: NCC Property Tax Exemption (Ordinance 07-131)

Dear Mr. Clark:

The State Council for Persons with Disabilities (SCPD) has reviewed Ordinance No. 07-131, which would revise the current exemptions from real estate taxes for seniors and individuals with disabilities in New Castle County. It would also affect sewer bills for seniors and individuals with disabilities.

As background, in September, SCPD submitted comments on a predecessor ordinance intended to reduce property tax and sewer exemptions for senior citizens and persons with disabilities. Consistent with the attached September 12 News Journal article, that ordinance [07-114] was withdrawn after a groundswell of communication from the public. The new ordinance [07-131 and attached] was introduced on September 25 in anticipation of a vote on October 9. The new ordinance does reflect the SCPD's influence. The attached September 24, 2007 News Journal article recites as follows:

> In a nod to a request from the State Council for Persons with Disabilities, Smiley is offering to raise the income limit for disabled homeowners to $50,000 so they can have parity with seniors.

To facilitate review, SCPD is providing the following tables which highlight the most significant changes between existing law and the proposed ordinance.

The current ordinance reflects the following standards:

	Residency Duration	Income Cap (excludes Social Security & RR Retirement)	Property Tax Assessed Value Exemption	Cap on "Expensive" Real Property
Elderly	Resident as of July 1 of Fiscal Year	$50,000 individual $50,000 couple	$50,000	None
Persons with Disability	Resident as of July 1 of Fiscal Year	$40,000 individual $40,000 couple	$40,000	None

Under the new ordinance, persons currently qualifying for the above exemptions would be unaffected, i.e. grandfathered. Indeed, even if a "grandfathered" taxpayer moved to a new house, the old exemption limits would apply to the new house. For new applicants, the following standards would apply:

	Residency Duration	Income Cap (excludes Social Security & RR Retirement)	Property Tax Assessed Value Exemption	Cap on "Expensive" Real Property
Elderly	4 years	$50,000 individual $50,000 couple	$32,000	$125,000 Assessment (equates to $400,000 market value per article)
Persons with Disability	4 years	$50,000 individual $50,000 couple	$32,000	$125,000 Assessment (equates to $400,000 market value per article)

Sewer bills would also be affected. According to an August 7 News Journal article, persons qualifying for an exemption currently pay a flat sewer fee of $36.00 annually. This is based on a fee adopted by County Council. This approach would be continued for "grandfathered" taxpayers. For new applicants, the elderly and persons with disabilities would be billed 50% of total sewer charges or a minimum bill set by Council, whichever is greater. See Ordinance 07-114, Section 3, Par. G.

SCPD has the following observations to share if County Council intends to pursue enactment of this ordinance.

First, SCPD endorses the "grandfather" provision. The elderly and persons with disabilities are often on fixed incomes who have grown to reasonably rely on the current exemptions.

Second, the new ordinance restores equity by adopting the same standards for the elderly and persons with disabilities. This equity had been displaced by a 2004 ordinance. SCPD endorses this restoration.

Third, the ordinance does result in an anomaly. "Grandfathered" taxpayers with disabilities would still be subject to the $40,000 income cap. New applicants with disabilities would only be subject to a $50,000 income cap. Thus, if a "grandfathered" individual or couple's countable income increased from $39,000 to $41,000 on or after tax year 2008, the "grandfather" exemption would be lost. It would be preferable to amend the ordinance to raise the income cap to $50,000 for "grandfathered" persons with disabilities.

Fourth, Section 1, Proposed Section 14.06.303B2, incorporates an existing supplemental exemption for certain taxpayers who have lost limbs. Disability must be "due to the loss or loss of the use of both lower extremities or both upper extremities or both an upper and lower extremity such as to preclude locomotion without the aid of a brace, crutch, cane, or wheelchair and such as to require a home with special fixtures." While the concept underlying this supplemental exemption is salutary, the actual language could be improved. For example, it would literally not cover someone who was born without use of limbs since there has been no "loss". Moreover, it would literally not cover someone using a "walker", scooter, or other mobility device. SCPD recommends the following substitute:

> ...(D)ue to the loss <u>or inability to use</u> both lower extremities or both upper extremities or both an upper or lower extremity such as to <u>significantly impair</u> locomotion without the aid of a brace, crutch, cane, wheelchair, <u>or other assistive technology</u> and such as to require a home with special fixtures.

Parenthetically, the term "assistive technology" is well known and defined in law. It would encompass walkers, scooters, etc. <u>Compare</u> 29 U.S.C. 3002(a); 20 U.S.C. 1401(1); and Title 16 <u>Del.C.</u> Sec. 9403(3)b.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations or recommendations on the proposed ordinance.

Sincerely,

Daniese McMullin-Powell, Chair
State Council for Persons with Disabilities

cc: New Castle County Council Members
Mr. Christopher Coons
AARP
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

P&l/ncc ordinance tax exemptions 07-131 10-07